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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,547	05/05/2006	Ashish Sen	63146A	9470
109 7590 02/26/2009 The Dow Chemical Company Intellectual Property Section P.O. Box 1967 Midland, MI 48641-1967				
EXAMINER THROWER, LARRY W				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
02/26/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,547

**Applicant(s)**

SEN ET AL.

**Examiner**

LARRY THROWER

**Art Unit**

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-9, drawn to a process for winding an elastic fiber

Group II, claim(s) 10, drawn to package for elastic fiber

Group III, claim(s) 11-15, drawn to process for forming an elastic fiber.

Group IV, claim(s) 16-17, drawn to fabric.

2. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of Groups I-IV is an elastic fiber having a cross sectional area such that the width of the fiber is at least 3 times the thickness of the fiber. This common special technical feature is known in the prior art as evidenced by Reinehr *et al.* (US 6,774,064) in the abstract and Balchan (US 3,605,818) at col. 7, lines 14-36.

3. Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special

technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. See MPEP 1850.

As such, the "special technical feature" of Groups I-IV as set forth above is found to be taught by Reinehr *et al.* (US 6,774,064) and Balchan (US 3,605,818) and therefore does not define a contribution over the prior art.

4. During a telephone conversation with James Hoppe on February 5, 2009 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-17 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. **Claims 1-3 and 9** are rejected under 35 U.S.C. 102(b) as being anticipated by Balchan (US 3,605,818).

- Regarding **claims 1-3**, Balchan discloses a process for winding an elastic fiber (nylon) onto a core (30) for forming a package (page 2, lines 3-8; figs. 1-3; col. 4, lines 46-49; col. 7, lines 14-36; claim 5). The process includes forming the elastic fiber into a shape having a fiber cross section such that the width of the fiber is at least 5 times the thickness of the fiber, prior to winding onto the core (col. 7, lines 14-36).
- Regarding **claim 9**, Balchan discloses the fiber being formed from two individual filaments having a generally round cross-section (fig. 1), but wherein the two or more filaments are coalesced into a fiber having a cross section such that the width of the fiber is at least 3 times the thickness of the fiber (col. 7, lines 14-36), such shape being determined prior to winding the elastic fiber onto the tube core (fig. 1).

8. **Claims 1-3 and 7-8** are rejected under 35 U.S.C. 102(e) as being anticipated by Koyanagi *et al.* (US 2003/0108740).

- Regarding **claims 1-3**, Koyanagi *et al.* discloses a process for winding an elastic fiber onto a core for forming a package (¶115). The process includes forming the

elastic fiber into a shape having a fiber cross section such that the width of the fiber is at least 5 times the thickness of the fiber, prior to winding onto the core (§94).

- Regarding **claims 7-8**, Koyanagi *et al.* discloses the fiber being formed using dies having an opening which has two generally perpendicular axes, wherein one axis is at least about 3 times longer than the other axis (§§ 94 and 115).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 4-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balchan (US 3,605,818), as applied to claim 1 above, in view of Patel *et al.* (US 2005/0165193).

- Balchan fails to disclose the elastic fiber being an olefin polymer. However, Patel *et al.* discloses a process for winding an elastic fiber onto a core (fig. 3), the elastic fiber being an olefin polymer (abstract), a linear ethylene-alpha olefin interpolymer (§8), or a substantially linear ethylene-alpha olefin interpolymer which has been substantially crosslinked (§91). Patel *et al.* teaches that these materials exhibit good resistance to ozone, chlorine and high temperature (§8). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have

selected olefin polymers of Patel *et al.* for use in the method of Balchan in order to effectively resist zone, chlorine and high temperatures, as taught by Patel *et al.*

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LARRY THROWER whose telephone number is 571-270-5517. The examiner can normally be reached on Monday through Friday from 9:30AM-6PM est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Larry Thrower/  
Examiner, Art Unit 1791

/Christina Johnson/  
Supervisory Patent Examiner, Art Unit 1791